



WILLIAM S. BRODY (SBN: 136136)
JOSEPH M. WELCH (SBN: 259308)
BUCHALTER NEMER

A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
Telephone: (213) 891-0700
Fax: (213) 896-0400

Email: wbrody@buchalter.com, jwelch@buchalter.com

The following constitutes
the order of the court. Signed August 10, 2015

M. Elaine Hammond

Attorneys for Secured Creditors
Tom Lange Company, Inc. and
Tom Lange Company International, Inc.

M. Elaine Hammond
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

SANTA CRUZ BERRY FARMING
COMPANY, LLC, a California limited
liability company,

Debtor.

Case No. 15-51771 MEH

Chapter 11

**ORDER APPROVING STIPULATION AND
GRANTING MOTION FOR (I) ORDER
APPROVING USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION,
AND (III) SCHEDULING FINAL HEARING –
ON AN INTERIM AND LIMITED BASIS
THROUGH SEPTEMBER 30, 2015**

Date: August 13, 2015

Time: 2:00 p.m.

Place: United States Courthouse
Courtroom 3070
280 South First Street
San Jose, CA 95113-3099

The Court having considered the Stipulation Re Order Granting Emergency Motion for (I) Order Approving Use of Cash Collateral (II) Granting Adequate Protection, and (III) Scheduling Final Hearing – On an Interim and Limited Basis Through August 13, 2015 [Docket No. 102] (the “Stipulation”) dated July 28, 2015, by and between Santa Cruz Berry Farming Company, LLC, the

debtor and debtor in possession (the “Debtor”) in the above-captioned bankruptcy case (the “Case”), Tom Lange Company, Inc. and Tom Lange Company International, Inc. (“TLC”), California Coastal Rural Development Corporation (“CCRDC”), Del Mar Food Products, Inc. (“DMFP,” and collectively with TLC, the “Secured Parties” and each a “Secured Party”), and the Official Committee of Unsecured Creditors (the “Committee,” and collectively with Debtor and Secured Parties, the “Parties” and each a “Party”), the Motion for (I) Order Approving Use of Cash Collateral (II) Granting Adequate Protection, and (III) Scheduling Final Hearing (the “Motion”), and papers filed with the Court relating thereto, and for good cause, the Court finds and orders as follows:

IT IS HEREBY FOUND that:

A. Bankruptcy.

1. On May 25, 2015, Debtor filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the Case (the “Petition Date”).

B. Use of Cash Collateral.

1. Need for Use of Cash Collateral. Debtor asserts that it has an immediate need to use Cash Collateral in order to continue its business operations and avoid immediate and irreparable harm.

2. Adequate Protection. The rents, issues, profits and proceeds (the “Cash Collateral”) of the assets of Debtor’s bankruptcy estate (the “Estate”) existing as of the Petition Date (collectively with the Cash Collateral, the “Prepetition Collateral”) constitutes “cash collateral” of TLC and certain other secured parties (collectively, the “Secured Parties”) within the meaning of section 363(a) of the Bankruptcy Code, and pursuant to sections 361 and 363(e), the Secured Parties are entitled to adequate protection of their respective interests in the Collateral in connection with Debtor’s use of the Cash Collateral. The provision of adequate protection as approved by this Order is without prejudice to any Secured Parties’ rights with respect to whether such adequate protection provided constitutes sufficient “adequate protection” of such Secured Parties’ interest in the Collateral within the meaning of section 361.

1 C. Prior Orders.

2 1. On May 29, 2015, the Court entered its Order Granting Emergency Motion
3 for (I) Order Approving Use of Cash Collateral (II) Granting Adequate Protection, and (III)
4 Scheduling Final Hearing – On an Interim and Limited Basis [Through June 5, 2015] [Docket No.
5 30].¹

6 2. On June 5, 2015, the Court entered its Order (A) Approving Stipulation and
7 (B) Granting Emergency Motion for (I) Order Approving Use of Cash Collateral (II) Granting
8 Adequate Protection, and (III) Scheduling Final Hearing – On an Interim and Limited Basis
9 Through June 12, 2015 [Docket No. 46].

10 3. On June 16, 2015, the Court entered its Order Approving (A) Stipulation
11 No. 2 and (B) Granting Emergency Motion for (I) Order Approving Use of Cash Collateral (II)
12 Granting Adequate Protection, and (III) Scheduling Final Hearing – On an Interim and Limited
13 Basis Through June 23, 2015 [Docket No. 59].

14 4. On June 23, 2015, the Court entered its Order Approving (A) Stipulation
15 No. 3 and (B) Granting Emergency Motion for (I) Order Approving Use of Cash Collateral (II)
16 Granting Adequate Protection, and (III) Scheduling Final Hearing – On an Interim and Limited
17 Basis Through July 9, 2015 [Docket No. 78].

18 5. On July 13, 2015, the Court entered its Order Approving (A) Stipulation No.
19 5 and (B) Granting Emergency Motion for (I) Order Approving Use of Cash Collateral (II)
20 Granting Adequate Protection, and (III) Scheduling Final Hearing – On an Interim and Limited
21 Basis Through August 13, 2015 [Docket No. 93]

22 Based upon the foregoing findings, the Court makes the following Order.

23 **IT IS HEREBY ORDERED** that:

24 SECTION 1. Authorization and Conditions to Use of Cash Collateral.

25 1.1 Stipulation. The Stipulation is approved.

26
27
28 ¹ Defined terms herein that are not defined herein are used with the same sense and
meaning as such terms are defined in the Prior Order.

1 1.2 Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this
2 Order, Debtor is authorized to use the Cash Collateral, as follows:

3 1.2.1 Expiration Date. Debtor is authorized to use Cash Collateral on a limited
4 and emergency basis from August 13, 2015, through and including the earlier of (i) the date of an
5 occurrence of an Event of Default as provided under section 5.2.2(a) of this Order, or (ii)
6 September 30, 2015 (the “Use Period”).

7 1.2.2 Budget. Debtor is authorized to use Cash Collateral solely to pay only those
8 certain expenses actually incurred during the Use Period pursuant to the budget attached hereto as
9 Exhibit A (the “Budget”).

10 1.2.3 Procedure for Use of Cash Collateral. All Cash Collateral, now or hereafter
11 in possession of Debtor and the Estate shall be deposited by Debtor in a segregated account (the
12 “Designated Account”) and shall be subject to Secured Parties’ liens and security interests to the
13 same extent, validity and priority that such liens and security interests exist as of the Petition Date.

14 SECTION 2. Adequate Protection.

15 2.1 Postpetition Liens.

16 2.1.1 Postpetition Lien Granting. Each Secured Party is granted by Debtor,
17 effective as of the Petition Date, a “replacement lien” pursuant to sections 361 and 363(e) (a
18 “Postpetition Lien”) in all prepetition and postpetition assets in the Estate, whether tangible or
19 intangible, whether by contract or operation of law, and including all Cash Collateral thereof
20 (collectively, the “Postpetition Collateral,” and collectively with the Prepetition Collateral, the
21 “Collateral”), but not including claims or causes of action possessed by Debtor’s bankruptcy estate
22 under sections 544, 545, 547, 548, 553(b), or 723(b), and all proceeds therefrom. The Postpetition
23 Lien is only to the extent of any diminution in value of the Prepetition Collateral arising from the
24 use of Cash Collateral. The Postpetition Lien is subordinated to the compensation and expense
25 reimbursement (excluding professional fees) of a superseding chapter 7 trustee in the Case.

26 2.1.2 Postpetition Lien Priority. The Postpetition Lien in favor of each Secured
27 Party is deemed to have the same extent, validity and priority as the Prepetition Lien in favor of
28 such Secured Party, subject only to any lien or security interest that is valid, perfected and senior to

1 the interest of such Secured Party effective as of the Petition Date and not otherwise avoided and
2 preserved under section 551.

3 2.1.3 Postpetition Lien Perfection. This Order constitutes sufficient and
4 conclusive evidence of the granting, attachment, priority, perfection, and validity of the
5 Postpetition Lien, effective as of the date and time of entry of this Order, without any further act
6 required under federal, state, or local law requiring notice, filing, registration, recording,
7 possession or other act to validate or perfect a security interest or lien, including without limitation
8 deposit account control agreements, merchant payment agreements, merchant payment direction
9 letters, cash transport agreements, and such other agreements with any party possessing or
10 asserting an interest in the Collateral (a “Perfection Act”). Notwithstanding the foregoing, if any
11 Secured Party, in its sole discretion, elects to effectuate a Perfection Act, each Secured Party is
12 authorized to perform such act, and if requested by a Secured Party, Debtor is authorized to
13 perform such act to the extent necessary or required, and in such event, the subject filing or
14 recording office or agency is authorized to accept, file, and/or record any document in regard to
15 such act in accordance with applicable law. No defect or failure in connection with an attempt to
16 perform a Perfection Act shall limit, waive, or alter the validity, enforceability, attachment, or
17 perfection of the Postpetition Lien by virtue of entry of this Order.

18 2.2 Section 507(b) Priority. Each Secured Party retains its rights under section 507(b).

19 2.3 Adequate Protection. Entry of this Order does not affect the rights of any Secured
20 Parties objecting to the use of the Cash Collateral or contesting the adequate protection provided
21 pursuant to this Order as sufficient adequate protection of its interests.

22 **SECTION 3. Representations; Covenants; and Waivers.**

23 3.1 Reporting. Debtor shall timely provide each Secured Party with (a) on a daily
24 basis, information regarding the entities or persons to whom Debtor has sold or intends to sell or
25 who Debtor is using or intends to use to sell and cool produce (separating “organic” and
26 “conventional”) and copies of any written agreements with such entities or persons or essential
27 terms of any oral agreements with such entities or persons, (b) a report, in form and substance
28 reasonably acceptable to the Secured Party receiving such report, detailing (i) on a daily basis, the

1 volume/quantity of produce (separating “organic” and “conventional”) harvested and the deliveries
2 or sales of such produce that occurred during the weekly period, (ii) on a daily basis, the entities or
3 persons to whom Debtor has sold or who Debtor used to sell and cool produce, and the
4 volume/quantity of such produce received by or sold to such entity or person, (iii) on a daily and
5 weekly basis, the cash receipts from sales received during the applicable weekly period, (iv) on a
6 weekly basis, the amount of cash in all bank accounts, and (v) on a bi-monthly basis, a schedule
7 comparing actual collections and expenditures (by expense category) on a cash basis to the
8 anticipated income and expenses set forth in the Budget for each week ending on Friday (a
9 “Reconciliation Report”) to be delivered to each Secured Party not later than 5:00 p.m. on the
10 following Monday, (c) all documents and information submitted by Debtor to the United States
11 Trustee, and (d) upon the reasonable request of a Secured Party, such other information pertaining
12 to Debtor’s operations, financial affairs, and the Collateral, including but not limited to bills,
13 invoices, bank statements, cancelled checks and receipts (collectively, the “Reporting Obligations”
14 and each a “Reporting Obligation”).

15 3.2 Access to Premises. Upon the reasonable request of a Secured Party and 24 hour
16 notice, Secured Parties are permitted to access to any individuals representing or retained by
17 Debtor or any premises occupied by Debtor for the purpose of enabling such Secured Party to
18 inspect and audit the Collateral and Debtor’s books and records, so long as such access and
19 inspection is reasonable and do not substantially interfere with Debtor’s operations.

20 3.3 Insurance. Debtor shall maintain at all times casualty and loss insurance coverage
21 of the Collateral in compliance with the United States Trustee Guidelines and in an amount
22 acceptable to each Secured Party to sufficiently cover each Secured Party’s interests in the
23 Collateral. Such insurance is to specifically include such Secured Party as a loss payee and
24 additional insured. Debtor is required to deliver proof of such insurance to each Secured Party
25 within 5 days of the entry of this Order.

26 SECTION 4. Debtors Waivers, Consents and Releases.

27 4.1 Debtor’s Waivers. Debtor waives any rights that it may have to (a) use Cash
28 Collateral pursuant to section 363 during the Use Period on terms other than those set forth in this

1 Order, and (b) incur financing or indebtedness out of the ordinary course during the Use Period
2 that includes the granting of liens, claims or interests in favor of such other party that are senior or
3 pari passu with the liens, claims and interests in favor of Secured Parties.

4 4.2 Section 506(c) Waiver. No costs or expenses of administration authorized to be
5 paid by this Order (excluding fees and costs of the United States Trustee or the Court) incurred
6 during the Use Period shall be charged against any Secured Party or the Collateral pursuant to
7 sections 105, 506(c), 552(b) (with respect to the Court's ability to order otherwise as provided in
8 such section), or any similar principle of law, without the prior written consent of such Secured
9 Party, and no such consent shall be implied from any other action, inaction or acquiescence by
10 such Secured Party.

11 SECTION 5. Default; Rights and Remedies; Relief from Stay.

12 5.1 Event of Default. An Event of Default under this Order shall occur upon any of the
13 following events: (a) a breach or failure to comply with any term, covenant, representation,
14 warranty or requirement of this Order or any other order of the Court, (b) the granting in favor of
15 any party other than Secured Parties of a security interest in or lien upon any Collateral or a claim
16 against the Estate having priority senior or pari passu with the security interests, liens or claims in
17 favor of the Secured Parties, except to the extent that such party had a security interest in or lien
18 upon property of the Estate on the Petition Date that was senior in priority senior or pari passu with
19 the security interests, liens or claims of each Secured Party existing on the Petition Date, (c) entry
20 of an order converting this Case to a case under chapter 7 of the Bankruptcy Code, (d) entry of an
21 order appointing or resulting in the appointment of a trustee in this Case, (e) entry of an order
22 granting relief in favor of any other party (including lessors and landlords) that includes enabling
23 such party to exercise state law or contractual rights and remedies with respect to property of the
24 Estate that could have a material adverse effect on Debtor, its business or the Collateral, or (f) any
25 stay, reversal, vacation or rescission of the terms of this Order, or any modification of any terms of
26 this Order that is not reasonably acceptable to the Secured Parties.

1 5.2 Remedies on Occurrence of Event of Default.

2 5.2.1 Notice of Default. Upon the occurrence of an Event of Default, any Secured
3 Party may provide notice of the default (a “Notice of Default”) via email, facsimile or overnight
4 mail to (a) Debtor, (b) counsel for Debtor, and (c) in the event an Official Committee of Unsecured
5 Creditors is formed in the Case (the “Committee”) and retains counsel, to counsel for the
6 Committee.

7 5.2.2 Consequences Upon Notice of Default.

8 (a) No Further Use of Cash Collateral. Upon delivery of a Notice of
9 Default or the last day of the Use Period, Debtor is prohibited from any further use of Cash
10 Collateral without further written consent of Secured Parties or an order of the Court.

11 (b) Relief from Automatic Stay. Upon Debtor’s failure to cure an Event
12 of Default within 5 days after the delivery of a Notice of Default, each Secured Party is entitled to
13 file a declaration setting forth the evidence of the default and the service of the Notice of Default
14 (the “Notice of Default Declaration”) and request a hearing to consider a motion for relief from the
15 automatic stay, a motion for the appointment of a chapter 11 trustee, or a motion to dismiss the
16 Case, to be scheduled and heard on an expedited basis.

17 (c) Motion to Compel Production of Documents. Upon Debtor’s failure
18 to cure an Event of Default within 5 days after the delivery of a Notice of Default with respect to a
19 Reporting Obligation to a Secured Party or Secured Parties under the provisions of this Order, then
20 each Secured Party is entitled to file a Notice of Default Declaration and request a hearing to
21 consider a motion to compel production of documents by the Debtor to be scheduled and heard on
22 an expedited basis. The Court, in its discretion, may award attorneys’ fees and costs to the
23 prevailing party on a motion to compel production of documents.

24 5.2.3 Retention of Rights. Notwithstanding the occurrence of an Event of
25 Default, each Secured Party retains all of its rights, interests, liens, privileges, claims and
26 protections granted, authorized or acknowledged by this Order.

27 5.2.4 Limited Relief from Automatic Stay to Effectuate Order. The automatic
28 stay provisions of section 362 and any other restriction or injunction imposed by an order of the

1 Court or by law are modified and vacated without further notice, application, motion, hearing, or
2 order of the Court to the extent necessary to permit Secured Parties to perform any act authorized
3 or permitted under this Order.

4 **SECTION 6. Other Rights and Matters.**

5 6.1 Power to Waive Rights; Duties to Third Parties. Each Secured Party retains the
6 right to waive any interest, claim, right, remedy or privilege in its favor (a “Secured Party Right”)
7 and shall have no obligation or duty to any other party with respect to the exercise or enforcement,
8 or failure to exercise or enforce any Secured Party Right, as applicable. Any waiver by a Secured
9 Party of a Secured Party Right shall not be or constitute a continuing waiver. A delay in or failure
10 to exercise or enforce any Secured Party Right shall neither constitute a waiver of such Secured
11 Party Right, subject Secured Parties to any liability to any other party, nor cause or enable any
12 other party to rely upon or in any way seek to assert as a defense to any obligation owed by
13 Debtor, any obligor or any other person or entity to Secured Parties.

14 6.2 Reservation of Rights. This Order is in addition to and without prejudice to the
15 interests, claims, rights, remedies, and privileges under the Bankruptcy Code, applicable
16 documents or agreements, or law, in favor of Debtor, each Secured Party, or any other party in
17 interest, which each such party fully reserves, including without limitation rights to seek further,
18 different, or additional adequate protection, to seek relief from the automatic stay, to seek an
19 injunction, to not consent to or oppose any request for further use of Cash Collateral or granting of
20 any interest in any of the Collateral or priority in favor of any other party, to object to any sale of
21 assets, to object to the allowance and/or payment of compensation of professionals or other
22 persons or entities seeking compensation or reimbursement from Debtor’s bankruptcy estate, and
23 to pursue all non-bankruptcy claims, rights and remedies.

24 6.3 Extension of Order; Further Hearing. The Parties agree that the Use Period may be
25 extended by further stipulation by the Parties and order of the Court (the “Use Period Extension”).
26 In the event the Use Period Extension does not occur by September 15, 2015, the Court may
27 conduct a hearing upon Debtor’s request for an order authorizing Debtor’s further use of cash
28 collateral beyond the Use Period on shortened time on a date and time convenient to the Court

1 prior to September 30, 2015 (a “Further Hearing”). Further or additional papers and evidence in
2 support of the Motion are to be filed and served (via electronic mail) no later than seven days
3 before the Further Hearing at 5:00 p.m. (the “Additional Motion Papers”). Further or additional
4 response or opposition to the Motion and the Additional Motion Papers is to be filed and served
5 (via electronic mail) no later than two days before the Further Hearing at 5:00 p.m. (the
6 “Responses”). Any reply to the Responses is to be filed and served (via electronic mail) no later
7 than one day before the Further Hearing at 5:00 p.m.

EXHIBIT A

BUDGET

A. Only to the extent necessary to avoid irreparable harm, and

B. Line item budget of income and expenses between August 1, 2015, through and including September 30, 2015:

Estimated 2015 Income & Expenses (2015 Crop Only)

Monthly Budgets							
Income/Receipts	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Total
Boxes Conventional	45,000	75,000	95,000	75,000	20,000	-	310,000
Price/Box Conventional	\$ 9.00	\$ 11.00	\$ 12.00	\$ 12.00	\$ 13.00	-	
Boxes Organic	45,000	70,000	90,000	70,000	30,000	-	305,000
Price/Box Organic	\$ 12.00	\$ 14.00	\$ 15.00	\$ 20.00	\$ 22.00	-	
Freezer/Organic (20# Tray)	2,500	2,500	2,500	15,000	-	-	22,500
Freezer/Conv. (20# Tray)	2,500	2,500	2,500	15,000	-	-	22,500
Conv. Juice (20# Tray)	1,000	1,000	1,000	5,000	-	-	8,000
Organic Juice (20# Tray)	1,000	1,000	1,000	5,000	-	-	8,000
Total Sales/Sources	\$ 1,011,400	\$ 1,871,400	\$ 2,556,400	\$ 2,692,000	\$ 920,000		\$ 9,051,200
Direct Expenses							
Less: Packaging Materials	(54,000)	(87,000)	(111,000)	(87,000)	(30,000)	-	(369,000)
Less: Cooling	(38,700)	(62,350)	(79,550)	(62,350)	(21,500)		(264,450)
Less: Ranch Payroll	(420,900)	(601,500)	(707,620)	(707,620)	(280,600)	-	(2,718,240)
Plus: Fed Taxes 7.65%	(32,199)	(46,015)	(54,133)	(54,133)	(21,466)	-	(207,945)
Plus: State Taxes 4.4%	(19,488)	(27,849)	(32,763)	(32,763)	(12,992)	-	(125,855)
Total Payroll Due	(472,587)	(675,364)	(794,516)	(794,516)	(315,058)	-	(3,052,040)
Cash from Operations	446,113	1,046,686	1,571,334	1,748,134	553,442	-	5,365,710
Indirect Expenses							

1	Automotive DMV	1,047	1,047	1,047	1,047	1,047		5,235
2	Advertising & Promotion	1,500	1,500	250	250	250		3,750
3	Bank Charges	300	300	300	300	300	300	1,800
4	Chemicals (Note 2)	39,660	39,660	39,660	18,000	-		136,980
5	Computer Expenses	500	500	500	500	500		2,500
6	Commissions (Note 1)	45,000	72,500	92,500	72,500	25,000	-	307,500
7	Equipment Leases	20,000	20,000	20,000	20,000	20,000		100,000
8	Fabrication	500	500	500	500	500		2,500
9	Farm Supplies	1,500	1,500	1,500	1,500	1,500		7,500
10	Fertilizers (Note 2)	15,000	15,000	15,000	-	-		45,000
11	Fuel	20,000	20,000	20,000	20,000	15,000		95,000
12	Insurance	2,782	2,782	2,782	2,782	2,782		13,910
13	Land Rent - Packard	-	-	-	-	-	-	-
14	Land Rent - Trafton	26,667	26,667	26,667	26,667	26,667	26,667	160,000
15	Land Rent - Malatesta	-	-	-	-	-		-
16	Marketing Assessments/MOA	-	23,659	-	-	-		23,659
17	Office Expenses	2,000	2,000	2,000	2,000	2,000	2,000	12,000
18	Organic Certifications	383	383	383	383	383		1,915
19	Persimilis (organic pest control)	7,000	7,000	7,000	7,000			28,000
20	Property Taxes	-	-	-	-	-	-	-
21	PVWMA (Post) - New	16,000	16,000	10,000	10,000	10,000		62,000
22	PVWMA (Pre) - Old							-
23	Repairs and maintenance	12,000	12,000	12,000	12,000	12,000		60,000
24	Salaries (non-insiders)	31,975	31,975	31,975	31,975	31,975	20,000	179,875
25	Sanitation	5,132	5,132	5,132	5,132	5,132		25,660
26	Shop/Office Rent	6,940	6,940	6,940	6,940	6,940	2,000	36,700
27								
28								

Software Support	2,534	2,534	2,534	2,534	2,534	1,000	13,670
Telephones	2,877	2,877	2,877	2,877	2,877	500	14,885
Third Party Audits	300	300	300	300	300		1,500
Transportation Expenses	500	500	500	500	500		2,500
US Trustee Fees	9,750			13,000			22,750
Utilities	5,645	5,645	5,645	5,645	5,645	500	28,725
Workers Comp Insurance	24,433	24,433	24,433	24,433	24,433	24,433	146,598
Total Overhead	301,925	343,334	332,425	288,765	198,265	77,400	1,542,112
Net Cash Flow	144,189	703,352	1,238,910	1,459,370	355,178	(77,400)	3,823,598
Cumulative Cash Flow	144,189	847,541	2,086,451	3,545,820	3,900,998	3,823,598	

Notes

1 – Commissions are estimated at \$.50/box as follows: (a) \$.35/box to Santa Cruz Sales, LLC (per stipulation among interested parties and proposed order with marketing agreement filed concurrently by Debtor); and (b) \$.15/box to Fritz Koontz provided both (i) the Debtor's monthly average for sales on fresh fruit is at least \$9.00/box for conventional and \$11.00/box for organic and (ii) the Debtor's Net Cash Flow is at least 75% of projections listed herein.

2 - Fertilizer and Chemical expense figures were switched.

END OF ORDER

COURT SERVICE LIST

ECF Recipients.